Leong Kum Whay & Anor v American International Assurance Co Ltd

HIGH COURT (KUALA LUMPUR) — CIVIL APPEAL NO S1-22-485 OF 1993
MOHD NOOR AHMAD J
25 SEPTEMBER 1998

Insurance *— Life insurance — Duty of disclosure — Plaintiff held two policies from defendant — Plaintiff did not disclose policies with other insurance companies — Claim under policy — Whether facts were material and non-disclosure influenced defendant — Whether s 15C(4) of the Insurance Act 1963 applied — Insurance Act 1963 s 15C(4)*

The first plaintiff held two insurance policies from the defendant, the first effected on 9 August 1989 and the second effected on 5 March 1991. On 26 June 1993, the plaintiff met with an accident which resulted in permanent total blindness to his right eye. The defendant sought to avoid liability under the policies on the ground of suppression and/or non-disclosure of material facts, ie the plaintiff did not disclose in the proposal forms other existing personal accident policies with other insurance companies. The issue before the court was whether s 15C(4) of the Insurance Act 1963 ('the Act') applied. Section 15C(4) states that no life policy shall be called in question by an insurer after the expiry of two years from the date on which it was effected on the ground that the statement made in the proposal for insurance was inaccurate or false. The defendant had to show why and how such suppression and/or non-disclosure of facts had influenced itself and whether those facts are material.

Held, allowing the plaintiffs' claim:

The policies would fall under the definition of 'life policy' under s 5 in the First Schedule of the Act and as such, s 15C(4) applied. The first policy was effected on 9 August 1989 and the accident happened on 26 June 1993. Thus, the two-year requirement under the section had expired and it was caught by the section. The defendant failed to prove why and how such suppression and/or non-disclosure of the information on the other policies had influenced the defendant in deciding whether or not to accept the proposal, fix the premium and issue the policy. Therefore, the first policy was valid and the defendant could not avoid its liabilities under it.

The second policy was effected on 5 March 1991 and the two-year period had not expired at the time of the accident. Hence, the provision of s 15C(4) did not apply. However, the burden was on the defendant to show that the information not disclosed or suppressed had influenced the defendant in deciding whether or not to accept the risk and in fixing the amount of premium, which the defendant had failed to do. Even if the other policies had been disclosed in the proposals, it would not have influenced the defendant to decide whether or not to accept the risk and in fixing the amount of premium.

In this type of life insurance, the number of other policies was not a material fact because the defendant would have accepted the risk in any event. Therefore, the second policy was also valid and the defendant could not avoid its liabilities under it (see pp 27C–D and 28C–H).

[Bahasa Malaysia summary

Plaintif pertama memegang dua polis insurans dari defendan, yang pertama dkuatkuasakan pada 9 Ogos 1989 dan yang kedua dikuatkuasakan pada 5 Mac 1991. Pada 26 Jun 1993, plaintif telah mengalami satu kemalangan yang mengakibatkan kebutaan tetap sepenuhnya kepada mata kanannya. Defendan cuba untuk mengelakkan tanggungan di bawah polisi-polisi tersebut atas alasan penyekatan dan/atau ketidak-dedahan fakta-fakta material, iaitu plaintif telah tidak mendedahkan dalam borang cadangan polisi kemalangan peribadi lain yang wujud dengan syarikat-syarikat insurans yang lain. Isu di hadapan mahkamah adalah sama ada s 15C(4) Akta Insurans 1963 ('Akta tersebut') terpakai. Seksyen 15C(4) menyatakan bahawa tiada polisi nyawa akan dipanggil untuk dipersoalkan oleh penanggung insurans selepas luputnya tempoh selama dua tahun daripada tarikh ianya dikuatkuasakan atas alasan bahawa kenyataan yang dibuat dalam cadangan untuk insurans adalah tidak tepat atau palsu. Defendan terpaksa menunjukkan mengapa dan bagaimana penyekatan dan/atau ketidak-dedahan fakta-fakta telah mempengaruhi dirinya sendiri dan sama ada fakta-fakta itu adalah penting.

Diputuskan, membenarkan tuntutan plaintif:
Polisi-polisi tersebut akan terlingkung di bawah definasi 'polis nyawa' di bawah s 5 Jadual Pertama Akta tersebut dan oleh yang demikian, s 15C(4) terpakai. Polisi yang pertama telah dikuatkuasakan pada 9 Ogos 1989 dan kemalangan tersebut telah berlaku pada 26 Jun 1993. Dengan itu, syarat dua tahun di bawah seksyen tersebut telah luput dan ianya terperangkap oleh seksyen tersebut. Defendan telah gagal untuk membuktikan mengapa dan bagaimana penyekatan dan/atau ketidak-dedahan sedemikian akan maklumat atas polisi-polisi lain telah mempengaruhi defendan dalam memutuskan sama ada untuk menerima polisi tersebut atau pun tidak, menetapkan premium dan mengeluarkan polisi tersebut. Dengan itu, polisi yang pertama adalah sah dan defendan tidak boleh mengelakkan tanggungannya di bawah polisi tersebut.

Polisi kedua telah dikuatkuasakan pada 5 Mac 1991 dan tempoh dua tahun masih belum luput pada waktu kemalangan itu. Dengan itu, peruntukan s 15C(4) tidak terpakai. Walau bagaimanapun, bebanan terletak ke atas defendan untuk menunjukkan bahawa maklumat tersebut yang tidak didedahkan atau disekat telah mempengaruhi defendan dalam memutuskan sama ada menerima risiko tersebut atau pun tidak dan dalam menetapkan jumlah

premium, yang mana telah gagal dilakukan oleh defendan. Jika polisi-polisi yang lain telah didedahkan dalam cadangan-cadangan tersebut, ia tidak mungkin telah mempengaruhi defendan untuk memutuskan sama ada menerima risiko tersebut ataupun tidak dan dalam menetapkan jumlah premium tersebut. Dalam insurans nyawa jenis ini, bilangan polisi-polisi yang lain bukannya merupakan fakta material kerana defendan mungkin telah menerima risiko tersebut dalam sebarang keadaan. Dengan itu, polisi kedua adalah juga sah dan defendan tidak boleh mengelak dari tanggungannya di bawah polisi itu (lihat ms *****).]

Notes

For a case on duty of disclosure, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) para 93.

Legislation referred to

Insurance Act 1963 s 15C(4)

Manoharan Malayalam (*Karpal Singh & Co*) for the plaintiffs.
Andrew Khoo (*Khoo & Sidhu*) for the defendant.

Cur Adv Vult

Mohd Noor Ahmad J: The plaintiffs' claim is based on two insurance policies issued by the defendant ('the first policy' and 'the second policy'). The first policy was originally for the period of 10 August 1989 to 9 August 1990 and was subsequently renewed yearly by mutual consent from 10 August 1990 to 9 August 1991 and from 10 August 1991 to 9 August 1992. It was issued by the defendant pursuant to a proposal dated 9 August 1989. The second policy was originally for the period 7 March 1991 to 6 March 1992 and was subsequently renewed by mutual consent from 7 March 1992 to 6 March 1993. It was issued by the defendant pursuant to a proposal dated 5 March 1991. The policies were taken out by the first plaintiff and the second plaintiff is the beneficiary. At the time of the submission of the respective proposals, the first plaintiff had several other existing personal accident policies with other insurance companies which were not disclosed in the proposals except in the proposal for the second policy where only one policy was disclosed.

During the period of coverage under the policies, the first plaintiff's face was struck by a falling object from the ceiling in his house which resulted in permanent total blindness to his right eye.

The defendant seeks to avoid liabilities under the policies on the ground that the policies had been obtained by the plaintiffs by the suppression and/or non-disclosure of material facts, that is to say, the other existing personal accident policies with other insurance companies.

The parties agreed that the case be decided simply on written submissions on the issue of law without the need to call witnesses, based on

A the agreed facts. After having scrutinized their respective submissions, in view of s 15C(4) of the Insurance Act 1963 ('the Act'), I ordered the parties to reconsider whether they could agree on the facts relating to why and how such suppression and/or non-disclosure of the alleged material facts had influenced the defendant in deciding whether or not to accept the proposals, fix the premium and issue the policies and if the facts could be agreed upon, B the parties would be given the liberty to submit further on the issue, otherwise I would proceed to hear the witnesses on that issue only. When the parties came back, I was informed that they preferred to submit further on s 15C(4) of the Act and the issue whether the information supplied in the proposals formed the basis of the contract between the parties. Hence, C further written submissions were submitted for my consideration. It is evident from further submission that other than by contending that s 15C(4) of the Act does not apply and that the information supplied formed the basis of the contract, the defendant failed to demonstrate why and how such suppression and/or non-disclosure of facts had influenced the defendant and whether those facts are material. I have no other alternatives D but to proceed with my consideration based only on the written submissions and the further written submissions.

It is trite law that the incidence of double insurance does not apply to an insurance relating to human life as in this case. To my mind, the only issue for my consideration is whether the provision of s 15C(4) of the Act E applies. The section reads:

> No life policy effected before the commencement of this section shall, after the expiry of two years from such commencement, and no life policy effected after the commencement of this section shall, after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance or in a report of a F doctor, referee, or any person, or in a document leading to the issue of the policy, was inaccurate or false unless the insurer shows that such statement was on a material matter or suppressed a material fact and that it was fraudulently made by the policy holder with the knowledge that the statement was false or that it suppressed a material fact.

G Section 5 in the First Schedule of the Act defines life policy as:

> 'life policy' means any policy by which payment of policy moneys is insured on death (otherwise than by way of insurance against personal accident, disease or sickness *only*) or on the happening of any contingency dependent on the termination or continuance of human life, and includes a policy which is subject to payment of premiums for a term dependent on the termination H or continuance of human life and a policy securing the grant of any annuity for such a term. (Emphasis added.)

The word 'only' appearing in the phrase within the brackets denotes the intention of Parliament to exclude any insurance against personal accident, disease or sickness only from the definition and thus, from the application I of the provision of s 15C(4) of the Act.

A scrutiny of the impugned policies reveals that under the title 'Benefits', the defendant had undertaken to provide indemnity for loss of

life, sight, dismemberment, disability and medical expense and other specified losses as stated in the policy information page within the time limits indicated in the policy contract. Part I makes stipulation for natural death benefit and Pt II provides for supplementary benefits, that is to say, accidental death benefit (section I) and dismemberment and loss of sight indemnity (section II). Therefore, it is manifestly evident that the coverage is not in respect of personal accident, disease or sickness only but also for natural death, accidental death, dismemberment, disability and medical expense. Hence, the impugned policies fall under the definition of life policy. That being the case, the provision of s 15C(4) of the Act applies.

The first policy was effected on 9 August 1989 and the accident happened on 26 June 1993, that is to say, the two-year requirement under the section had expired. Hence, it is caught by the section. Under the section, the first policy cannot be called in question by the defendant on the ground that the statement made in the proposal for insurance was inaccurate or false unless the defendant shows that such statement was on a material matter or suppressed a material fact and that it was fraudulently made by the first plaintiff with the knowledge that the statement was false or that it suppressed a material fact. To my mind, as the defendant failed to prove the required ingredients as I have stated in para 4 above, the first policy is valid and therefore, the defendant cannot avoid its liabilities under it.

In respect of the second policy as it was effected on 5 March 1991, the two-year period had not expired at the time of the accident. Hence, the provision of s 15C(4) of the Act does not apply. Be that as it may, to my mind, the burden is on the defendant to show that the information on the other policies not disclosed or suppressed had influenced the defendant in deciding whether or not to accept the risk and in fixing the amount of premium. The defendant failed to demonstrate such. In my view, even if the other policies had been disclosed in the proposals, it would not have influenced the defendant to decide whether or not to accept the risk and in fixing the amount of premium. In this type of life insurance, the number of other policies is not a material fact because the defendant would have accepted the risk in any event. Also, the number of other policies would not affect the amount of the premium because the determination of the quantum is based on factors such as age, health, previous refusals, claim history and previous convictions (see Poh Chu Chai on the *Law of Insurance* (3rd Ed) at pp 109–134). Therefore, the second policy is valid and hence, the defendant cannot avoid its liabilities thereunder.

Therefore, judgment is entered against the defendant as prayed.

Plaintiffs' claim allowed.

Reported by Jafisah Jaafar